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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/631,320	07/31/2003	Charles Edward Bowers	30-4397DIV2	1906
7590	10/31/2005			
			EXAMINER	
			YAO, SAMCHUAN CUA	
			ART UNIT	PAPER NUMBER
			1733	

DATE MAILED: 10/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/631,320

Applicant(s)

BOWERS, CHARLES EDWARD

Examiner

Sam Chuan C. Yao

Art Unit

1733

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 20 October 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) The period for reply expires 3 months from the mailing date of the final rejection.
 b) The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) They raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) They raise the issue of new matter (see NOTE below);
 - (c) They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. Applicant's reply has overcome the following rejection(s): _____.

6. Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. For purposes of appeal, the proposed amendment(s): a) will not be entered, or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 29-40.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see the attached Examiner's remarks.

12. Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____

13. Other: _____.


 Sam Chuan C. Yao
 Primary Examiner
 Art Unit: 1733

REMARKS

As for Counsel's arguments on page 2 that, a) the present invention and WO '408 are commonly owned and have identical inventor; and, b) WO '408 is equivalent to 6,682,618, such are immaterial for a reference which is based on 102 (b). It is worth-noting that, the claims in Patent No. '618 are directed to a "*process of producing a yarn suitable for tufting*". (emphasis added). None of these claims requires forming **twisted** wrapped singles yarns. If a process step of twist setting yarns to form twisted yarns is critical or essential to the practice of the invention in Patent '618, but not included in the claim(s), then these claims maybe based on a disclosure which is not enabling. See *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976).

On page 2 last paragraph 4 to page 4 line 4, Counsel argues that WO '408 failed "to teach *untwisted wrapped singles yarns ...*" ("*untwisted ... yarns*" originally italicized). As noted in a prior office action, while it is desired to use twisted heat-treated yarns, such is not required/essential as evidence from the claims recited in WO '408. It worthnoting that, there are 20 claims recited in WO '408, and yet only dependent claim 17 requires "... *twist setting of the yarn*". More important, independent claim 16 is directed to forming a yarn which is "*suitable for tufting*"; and, claims 14-15 are directed to a tufted article or a carpet, using a yarn recited in claim 1. None of these claims requires forming/using twist set yarns. If twist set yarns are essential for making a tufted article (e.g. carpet) of WO '408, wouldn't it be imperative for these claims to positively require forming/using twist set yarns?

On page 4 1st full paragraph to page 6 full paragraph 1, Counsel argues that "... *there is nothing in either cited reference which shows that such a combination would or could be successful.*". Examiner strongly disagrees. In view that a) the claims recited in WO '408 only require wrapped or ring spun yarns without positively using twisted yarns to form a carpet/tufted article (1, 14-15 and 16); and, b) JP '340 teaches forming a tufted carpet using twist-free wrapped yarns, the collective teachings of the applied references would have suggested to one in the art that untwist wrapped singles yarns taught by WO '408 can successfully be used to form a carpet.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sam Chuan C. Yao whose telephone number is (571) 272-1224. The examiner can normally be reached on Monday-Friday with second Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Dunn can be reached on (571) 272-1171. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Sam Chuan C. Yao
Primary Examiner
Art Unit 1733

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10-26-05